IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, etc., *Appellants*

v.

MARIA C. FLORES DE OTERO, *Appellee*

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD, *Appellants*

v.

SERGIO PEREZ NOGUERIO, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

MOTION TO AFFIRM

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ARGUMENT

The appellants are appealing to this Court from the judgments entered by the District Court in these cases, whereby Section 689 of Title 20, L.P.R.A., is declared unconstitutional insofar as it requires United States citizenship of candidates for licensure as engineers, architects and surveyors. *In Re Griffiths,* 413 U.S. 717.

Appellants ostensibly present three questions as substantial and meriting the attention of this Court. However, the questions presented by Appellants actually come down to one: Is the Commonwealth of Puerto Rico to be exempted from the application of the fundamental rights guaranteed by the Constitution[1] of the United States, and effectuated by the Civil Rights Acts?

It is the contention of Appellees in these cases that this question should be answered in the negative.

I. THE COMMONWEALTH OF PUERTO RICO IS A "STATE OR TERRITORY" UNDER 42 U.S.C. 1983

As stated by Appellants in their Jurisdictional Statement, the jurisdiction of the District Court over the present action under 28 U.S.C. 1343 depends on the applicability of 42 U.S.C. 1983, the Civil Rights Act of 1871, to the Commonwealth of Puerto Rico.

Appellants rely mainly on this Court's decision in *District of Columbia* v. *Carter,* 40 U.S. 418, for their contention that Puerto Rico is not a "State or Territory" within the meaning of the Act. However, the

[1] It has been held unnecessary to determine which of either the Fifth or the Fourteenth Amendments applies to Puerto Rico, *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663.

question, under the reasoning of *Carter,* is not, as alleged by Appellants, whether "the evils which [section 1983] sought to correct were . . . present in Puerto Rico", (Jurisdictional Statement, p. 9), but rather whether the power of Congress to effectuate the policies of the Constitution of the United States extends directly to acts of a local nature by officials of the government of Puerto Rico. In *Carter* this Court found that, since under Article I, Section 8, Congress has direct control over acts of officials of the District of Columbia, the District was *sui generis* within the constitutional scheme. Conversely, where, as in Puerto Rico, there is no such direct control, Congress exercises its authority through the various civil rights acts.

The present case is but the latest in a long series of actions brought in the Puerto Rico District Court under 42 U.S.C. 1983, and the question of the statute's applicability is not a new one. In *Marín* v. *University of Puerto Rico,* 377 F. Supp. 613 (D.C.P.R. 1974), two Puerto Rican judges sitting as members of a three-judge district court, together with a non-Puerto Rican judge of the Court of Appeals, specifically rejected the contention that they had no jurisdiction under 42 U.S.C. 1983. The University, also relying on *Carter,* had moved for dismissal of the case. The District Court, 377 F. Supp. at p. 617, stated:

> It is clear to this Court that the rationale of affording a federal right in federal courts where local and distant officials might deny citizens their constitutional rights is as fully applicable to the Commonwealth of Puerto Rico as it is to the states of Virginia or California or to the Virgin Islands.

See also *Montalvo* v. *Colón,* 377 F. Supp. 1332; *El Mundo* v. *P. R. Newspaper Guild,* 346 F. Supp. 106;

Santiago v. *Torres Massa*, 342 F. Supp. 1152; *Vistamar, Inc.* v. *Vázquez*, 337 F. Supp. 375; *Glenwall Dev't.* v. *Schmidt*, 336 F. Supp. 1079.

Finally, if the District of Columbia is *sui generis* and therefore requires different treatment, it is because the District—as opposed to the Commonwealth of Puerto Rico—is a creature of the Constitution and not of Congress, and was given different treatment by the Constitution itself.[2] The purpose of the Act being to cover the widest possible geographical scope, Puerto Rico must fall under the blanket term "State or Territory." *Marín*, supra, 377 F. Supp. at p. 629 (on rehearing). It is not a matter of subjecting "all the local statutes and actions to the strict supervisory powers of the federal courts" (Jurisdictional Statement, p. 11), but rather whether the Commonwealth of Puerto Rico is to be given a free hand where basic civil constitutional rights are involved. Appellants' contention to that effect is not sustained by the cases. To use this Court's language in *Calero-Toledo, supra,* subjecting enactments of the Commonwealth of Puerto Rico to the standards of the Constitution and the Civil Rights Acts serves, and does not expand, the purposes thereof.

[2] Interestingly, the dissenting opinion in *Rodrigues Cintrón* v. *Richardson*, Civil No. 1099-72, (D.C.P.R., April 7, 1975), stated that "Puerto Rico's singular status makes analogy to the District of Columbia unpersuasive." In that case, a three-judge district court found the definition of the term United States as defined in Section 228(e), Title II of the Social Security Act, 42 U.S.C. 428 (the so-called Prouty Amendment to the Tax Adjustment Act of 1966) unconstitutional.

II. THE DISTRICT COURT PROPERLY DECLINED TO ABSTAIN

A. As a General Rule, Abstention Is Inappropriate in Civil Rights Cases

Appellees need not belabor the fact that abstention is the exception rather than the rule, *Zwickler* v. *Koota*, 389 U.S. 31 (1962), particularly in Civil Rights cases, *Bailey* v. *Patterson*, 369 U.S. 31 (1962); *Marín* v. *University of Puerto Rico*, 346 F. Supp. 470 (D.C.P.R., 1972).

B. The Present Case Was a Proper One for Federal Adjudication

Appellants strongly rely on this Court's recent decision in *Harris County Commissioners Court, et al* v. *Moore*, No. 73-1475 43 L.W.4222 (February 18, 1975), for their contention that the District Court should have abstained in this case. They argue that, as in *Moore*, there is an unsettled relationship between the Commonwealth Constitution and the statute involved in this case, and that, therefore, supposedly because *Moore* "expanded the abstention doctrine" (Jurisdictional Statement, p. 13), the District Court should have permitted the Supreme Court of Puerto Rico to rule on the constitutionality of the statute under the local Constitution.

However, Appellants' basic premise—that the abstention doctrine was "expanded" by *Moore*—is unfounded. This Court explicitly found in *Moore* that the Texas statute was subject to definition by the Texas Courts, and that such definition might define the "nature and continued validity of the federal constitutional claim." *Moore, supra,* text at note 8. See also

Indiana Real Estate Commission v. *Satoskar,* 417 U.S. 938.

Further, this Court, by citing *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1971), at least by implication refused to amplify the abstention doctrine in the manner suggested by Appellants. Appellees submit that in the present case there is no "integrated scheme of related constitutional provisions, statutes and regulations" calling as a whole "for clarifying interpretation by the state courts." On the contrary, the Puerto Rico Supreme Court clearly would have but two choices: either the citizenship requirement is invalid or it is not.[3] In either case, there is no reason why the federal courts should hold their hand in this case; there is nothing vague or ambiguous about the citizenship requirement which might make it susceptible of definition or interpretation. *Arias* v. *Examining Board,* 353 F. Supp. 857 (D.C.P.R. 1972); we are not dealing with "a rather vague Puerto Rican law . . .", *Fornaris* v. *Ridge Tool Co.,* 400 U.S. at 43; *England* v. *Medical Examiners,* 375 U.S. 411.

Finally, Appellees state that this Court has used a more liberal test in the case of Puerto Rico, in favor of local construction of its laws (Jurisdictional Statement, p. 13), and cite *Fornaris, supra* and *Wackenhut Corp.* v. *Aponte,* 386 U.S. 268, as authority for their contention. Assuming *arguendo* that those cases do stand for that proposition, they are clearly distinguishable from the present cases in that in the latter the Appellants are invoking certain basic civil rights guaranteed them by the Constitution.

[3] On February 8, 1974, the Supreme Court of Puerto Rico amended its rule governing admission to the Bar, eliminating the requirement of United States citizenship.

III. ON THE MERITS, THE STATUTE IS IN VIOLATION OF THE CONSTITUTIONAL STANDARDS

At the outset, it should be stressed that we are dealing with a totally illogical statute, insofar as its citizenship requirement is concerned. The crux of Appellants' justification for requiring United States citizenship of prospective engineers is the alleged policy of protection of the public against transient professionals who cannot be held responsible for their negligence. However, the statute permits aliens who have completed their training in Puerto Rico to receive unconditional licenses, yet no tie to Puerto Rico other than an alleged "interest" in remaining in Puetro Rico has been advanced by Appellants as evidence of their permanence. Again, the statute grants the same privilege to United States citizens recipients of professional degrees from accredited stateside schools who, of course, are just as mobile as aliens. As stated by the District Court, "There is no demonstrated relationship between citizenship and the likelihood that an individual will meet [his obligation under the Puerto Rico Civil Code provision, cited by Appellants, regarding responsibility of contractors for their negligence]." Ap. 3a, Jurisdictional Statement. Finally, the statute permits the Commonwealth government to hire engineers for government work in responsible positions whose only disqualification for a full license is the fact that they are aliens. Thus, even applying the "rational basis" test put forward by Appellants, the statute fails.

Appellants also attempt to justify the requirement by advancing an interest in controlling "the negative effects of an uncontrolled influx of aliens into professions which can be legitimately regulated by the State." (Jurisdictional Statement, p. 17). The fact is that

there is no such "uncontrolled" influx; entry into the professions is subject to passing the examinations and meeting all the other requirements of the statute including having four years' experience and, in the case of schools not formally recognized by the Board as accredited, an investigation into the course of studies undertaken by the applicant. 20 L.P.R.A. 689(2)(a).

CONCLUSION

> "The bosom of America is open to receive not only the opulent and respectable stranger but the oppressed and persecuted of all nations and religions; whom we shall wellcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment". George Washington (1783), as quoted in 20 Chi.L.R. 547 (1953).

The judgment of the District Court should be affirmed, as the questions presented by Appellants are insubstantial.

San Juan, Puerto Rico, this — day of May, 1975.

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